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Contract No. 14-06-200-8092-LTR1

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UNITED STATES
DEPARTMENT OF THE INTERIOR
BUREAU OF RECLAMATION
Central Valley Project, California

LONG-TERM RENEWAL CONTRACT BETWEEN THE UNITED STATES
AND
BROADVIEW WATER DISTRICT
PROVIDING FOR PROJECT WATER SERVICE
FROM DELTA DIVISION

THIS CONTRACT, made this ____ day of _____, 2004, in pursuance generally of the Act of June 17, 1902 (32 Stat. 388), and acts amendatory or supplementary thereto, including, but not limited to, the Acts of August 26, 1937 (50 Stat. 844), as amended and supplemented, August 4, 1939 (53 Stat. 1187), as amended and supplemented, July 2, 1956 (70 Stat. 483), June 21, 1963 (77 Stat. 68), October 12, 1982 (96 Stat. 1263), October 27, 1986 (100 Stat. 3050), as amended, and Title XXXIV of the Act of October 30, 1992 (106 Stat. 4706), all collectively hereinafter referred to as Federal Reclamation law, between THE UNITED STATES OF AMERICA, hereinafter referred to as the United States, and **BROADVIEW WATER DISTRICT**, hereinafter referred to as the Contractor, a public agency of the State of California, duly organized, existing, and acting pursuant to the laws thereof;

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20 WITNESSETH, That:

21 EXPLANATORY RECITALS

22 [1st] WHEREAS, the United States has constructed and is operating the Central Valley
23 Project, California, for diversion, storage, carriage, distribution and beneficial use, for flood control,
24 irrigation, municipal, domestic, industrial, fish and wildlife mitigation, protection and restoration,
25 generation and distribution of electric energy, salinity control, navigation and other beneficial uses,
26 of waters of the Sacramento River, the American River, the Trinity River, and the San Joaquin River
27 and their tributaries; and

28 [2nd] WHEREAS, the United States constructed the Delta-Mendota Canal and related
29 facilities, hereinafter collectively referred to as the Delta Division Facilities **and the San Luis Canal**
30 **and related facilities, hereinafter collectively referred to as the San Luis Unit**, which will be used
31 in part for the furnishing of water to the Contractor pursuant to the terms of this Contract; and
32 [Contractor specific issue w/respect to additional facilities]

33 [3rd] WHEREAS, the rights to Project Water were acquired by the United States pursuant
34 to California law for operation of the Project; and

35 [4th] WHEREAS, the Contractor and the United States entered into Contract No.
36 14-06-200-8092, hereinafter referred to as the Existing Contract, which established terms for the
37 delivery to the Contractor of Project Water from the Delta Division Facilities **and San Luis Unit**

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38 **from from November 27, 1959 through February 28, 1995; and**

39 [5th] WHEREAS, the Contractor and the United States have pursuant to subsection
40 3404(c)(1) of the Central Valley Project Improvement Act (CVPIA), subsequently entered into
41 interim renewal contract(s) identified as Contract No(s). **14-06-200-8092-IR1, 14-06-200-8092-IR2,**
42 **14-06-200-8092-IR3, 14-06-200-8092-IR4, 14-06-200-8092-IR5, 14-06-200-8092-IR6, and 14-06-**
43 **200-8092-IR7** the current of which is hereinafter referred to as the Existing Contract, which provided
44 for the continued water service to the Contractor from **March 1, 1995 through February 29, 2004;**
45 and

46 [5.1] WHEREAS, the Contractor entered into the Agreement for Partial Assignment
47 to Pajaro Valley Water Management Agency; and

48 [5.2] WHEREAS, the Contractor entered into the Agreement for Partial Assignment
49 to The Department of Water Resources for the Environmental Water Account; and

50 [6th] WHEREAS, Section 3404(c) of the CVPIA provides for long-term renewal of interim
51 and existing long-term Project Water contracts following completion of appropriate environmental
52 documentation, including a programmatic environmental impact statement (PEIS) pursuant to the
53 National Environmental Policy Act (NEPA) analyzing the direct and indirect impacts and benefits of
54 implementing the CVPIA and the potential renewal of all existing contracts for Project Water; and
55 [Contractor specific issue]

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56 [6.1] Contractor Specific Issue recognizing partial assignment of the contract to a third
57 party or the acquisition of Project Water through assignment(s), if such acquired water is being
58 covered under this Contract; and

59 [7th] WHEREAS, the United States has completed the PEIS and all other appropriate
60 environmental review necessary to provide for long-term renewal of the Existing Contract; and

61 [8th] WHEREAS, the Contractor has requested the long-term renewal of the Existing
62 Contract, pursuant to the terms of the Existing Contract, Federal Reclamation law, and the laws of the
63 State of California, for water service from the Project; and

64 [9th] WHEREAS, the United States has determined that the Contractor has fulfilled all of
65 its obligations under the Existing Contract; and

66 [10th] WHEREAS, the Contractor has demonstrated to the satisfaction of the Contracting
67 Officer that the Contractor has utilized the Project Water supplies available to it for reasonable and
68 beneficial use and/or has demonstrated projected future demand for water use such that the
69 Contractor has the capability¹ and expects to utilize fully for reasonable and beneficial use the
70 quantity of Project Water to be made available to it pursuant to this Contract; and [Contractor
71 Specific]

¹ Contractor specific issue – This recital may need to be modified for individual contractors who do not have the capability today to take Project Water but can demonstrate that they will have the capability to take Project Water prior to the delivery of water under this contract

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72 [11th] WHEREAS, water obtained from the Project has been relied upon by urban and
73 agricultural areas within California for more than 50 years, and is considered by the Contractor as an
74 essential portion of its water supply; and

75 [12th] WHEREAS, the economies of regions within the Project, including the Contractor's,
76 depend upon the continued availability of water, including water service from the Project; and

77 [13th] WHEREAS, the Secretary intends through coordination, cooperation, and partnerships
78 to pursue measures to improve water supply, water quality, and reliability of the Project for all
79 Project purposes; and

80 [14th] WHEREAS, the mutual goals of the United States and the Contractor include: to
81 provide for reliable Project Water supplies; to control costs of those supplies; to achieve repayment
82 of the Project as required by law; to guard reasonably against Project Water shortages; to achieve a
83 reasonable balance among competing demands for use of Project Water; and to comply with all
84 applicable environmental statutes, all consistent with the legal obligations of the United States
85 relative to the Project; and

86 [14.1] WHEREAS, the parties intend by this Contract to develop a more cooperative
87 relationship in order to achieve their mutual goals; and

88 [15th] WHEREAS, the Contractor has utilized or may utilize transfers, contract assignments,
89 rescheduling and conveyance of non-Project Water under this Contract as tools to minimize the

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90 impacts of Conditions of Shortage and to maximize the beneficial use of Project Water; and

91 [15.1] WHEREAS, the parties desire and intend that this Contract not provide a disincentive
92 to the Contractor in continuing to carry out the beneficial activities set out in the Explanatory Recital
93 immediately above; and

94 [16th] WHEREAS, the United States and the Contractor are willing to enter into this renewal
95 Contract pursuant to Federal Reclamation law on the terms and conditions set forth below;

96 NOW, THEREFORE, in consideration of the mutual and dependent covenants herein
97 contained, it is hereby mutually agreed by the parties hereto as follows:

98 DEFINITIONS

99 1. When used herein unless otherwise distinctly expressed, or manifestly incompatible
100 with the intent of the parties as expressed in this Contract, the term:

101 (a) [Calendar Year] shall mean the period January 1 through December 31, both
102 dates inclusive;

103 (b) [Charges] shall mean the payments required by Federal Reclamation law in
104 addition to the Rates and Tiered Pricing Components specified in this Contract as determined
105 annually by the Contracting Officer pursuant to this Contract;

106 (c) [Condition of Shortage] shall mean a condition respecting the Project during
107 any Year such that the Contracting Officer is unable to deliver sufficient water to meet the Contract

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108 Total;²

109 (d) "Contracting Officer" shall mean the Secretary of the Interior's duly
110 authorized representative acting pursuant to this Contract or applicable Federal Reclamation law or
111 regulation;

112 (e) "Contract Total" shall mean the maximum amount of water to which the
113 Contractor is entitled under subdivision (a) of Article 3 of this Contract;

114 (f) "Contractor's Service Area" shall mean the area to which the Contractor is
115 permitted to provide Project Water under this Contract as described in Exhibit "A" attached hereto,
116 which may be modified from time to time in accordance with Article 35 of this Contract without
117 amendment of this Contract;³

118 (g) "CVPIA" shall mean the Central Valley Project Improvement Act, Title
119 XXXIV of the Act of October 30, 1992 (106 Stat. 4706);

120 (g.1) "Delta Division Facilities" shall mean those existing and future Project
121 facilities in and south of the Sacramento-San Joaquin Rivers Delta, including, but not limited to, the
122 Tracy Pumping Plant, the O'Neill Pumping/Generating Plant, and the San Luis Reservoir, used to
123 divert, store and convey water to those Project Contractors entitled to receive water conveyed

2 Contractor specific/ Unit specific issue

3 Contractor specific issue with respect to using legal description or service area map

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124 through the Delta-Mendota Canal.

125 (h) [Eligible Lands] shall mean all lands to which irrigation water may be
126 delivered in accordance with Section 204 of the Reclamation Reform Act of October 12, 1982 (96
127 Stat. 1263), as amended, hereinafter referred to as RRA;

128 (i) [Excess Lands] shall mean all lands in excess of the limitations contained in
129 Section 204 of the RRA, other than those lands exempt from acreage limitation under Federal
130 Reclamation law;

131 (j) **“Full Cost Rate” shall mean an annual rate, as determined by the**
132 **Contracting Officer that shall amortize the expenditures for construction properly allocable to**
133 **the Project irrigation or M&I function, as appropriate, of facilities in service including all**
134 **O&M deficits funded, less payments, over such periods as may be required under Federal**
135 **Reclamation law, or applicable contract provisions. Interest will accrue on both the**
136 **construction expenditures and funded O&M deficits from October 12, 1982, on costs**
137 **outstanding at that date, or from the date incurred in the case of costs arising subsequent to**
138 **October 12, 1982, and shall be calculated in accordance with subsections 202(3)(B) and (3)(C)**
139 **of the RRA. The full-cost rate includes actual operation, maintenance, and replacement costs**
140 **consistent with Section 426.2 of the Rules and Regulations for the RRA;**⁴

4 This definition may be an issue with M&I contractors and those with Repayment contracts pursuant to section 9(d) of

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141 (k) [Ineligible Lands] shall mean all lands to which irrigation water may not be
142 delivered in accordance with Section 204 of the RRA;

143 (l) [Irrigation Full Cost Water Rate] shall mean the Full Cost Rate applicable to
144 the delivery of Irrigation Water;

145 (m) [Irrigation Water] shall mean water made available from the Project that is
146 used primarily in the production of agricultural crops or livestock, including domestic use incidental
147 thereto, and watering of livestock;

148 (n) [Landholder] shall mean a party that directly or indirectly owns or leases
149 nonexempt land, as provided in 43 CFR 426.2;

150 (o) [Municipal and Industrial (M&I) Water]⁵ shall mean Project Water, other than
151 Irrigation Water, made available to the Contractor. M&I Water shall include water used for human
152 use and purposes such as the watering of landscaping or pasture for animals (e.g., horses) which are
153 kept for personal enjoyment or water delivered to landholdings operated in units of less than five
154 acres unless the Contractor establishes to the satisfaction of the Contracting Officer that the use of
155 water delivered to any such landholding is a use described in subdivision (m) of this Article;

156 [Contractor Specific]

the Reclamation Projects Act 1939

⁵ Some Contractors may want to include “other water” definition in lieu of this definition.

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157 (p) M&I Full Cost Water Rate shall mean the Full Cost Rate applicable to the
158 delivery of M&I Water;

159 (q) "Operation and Maintenance" or "O&M" shall mean normal and reasonable
160 care, control, operation, repair, replacement (other than capital replacement), and maintenance of
161 Project facilities;

162 (r) "Operating Non-Federal Entity"⁶ shall mean the San Luis & Delta-Mendota
163 Water Authority, a Non-Federal entity which has the obligation to operate and maintain all or a
164 portion of the Delta Division Facilities pursuant to an agreement with the United States, and which
165 may have funding obligations with respect thereto;

166 (s) "Project" shall mean the Central Valley Project owned by the United States
167 and managed by the Department of the Interior, Bureau of Reclamation;

168 (t) "Project Contractors" shall mean all parties who have water service contracts
169 for Project Water from the Project with the United States pursuant to Federal Reclamation law;

170 (u) "Project Water" shall mean all water that is developed, diverted, stored, or
171 delivered by the Secretary in accordance with the statutes authorizing the Project and in accordance
172 with the terms and conditions of water rights acquired pursuant to California law;

173 (v) "Rates" shall mean the payments determined annually by the Contracting

⁶ Contractor specific issue with respect to additional operating non-federal entities

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174 Officer in accordance with the then current applicable water ratesetting policies for the Project, as
175 described in subdivision (a) of Article 7 of this Contract;

176 (w) "Recent Historic Average" shall mean the most recent five year average of the
177 final forecast of Water Made Available to the Contractor pursuant to this Contract or its preceding
178 contract(s);

179 (x) "Secretary" shall mean the Secretary of the Interior, a duly appointed
180 successor, or an authorized representative acting pursuant to any authority of the Secretary and
181 through any agency of the Department of the Interior;

182 (y) "Tiered Pricing Component" shall be the incremental amount to be paid for
183 each acre-foot of Water Delivered as described in subdivision (j) of Article 7 of this Contract;

184 (z) "Water Delivered" or "Delivered Water" shall mean Project Water diverted
185 for use by the Contractor at the point(s) of delivery approved by the Contracting Officer;⁷

186 (aa) "Water Made Available" shall mean the estimated amount of Project Water
187 that can be delivered to the Contractor for the upcoming Year as declared by the Contracting Officer,
188 pursuant to subdivision (a) of Article 4 of this Contract;

189 (bb) "Water Scheduled" shall mean Project Water made available to the Contractor
190 for which times and quantities for delivery have been established by the Contractor and Contracting

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191 Officer, pursuant to subdivision (b) of Article 4 of this Contract; and

192 (cc) "Year" shall mean the period from and including March 1 of each Calendar
193 Year through the last day of February of the following Calendar Year.

194 TERM OF CONTRACT

195 2. (a) This Contract shall be effective March 1, 200_, through February __, 20__. In
196 the event the Contractor wishes to renew this Contract beyond February __, _____, the Contractor
197 shall submit a request for renewal in writing to the Contracting Officer no later than two years prior
198 to the date this Contract expires. The renewal of this Contract insofar as it pertains to the furnishing
199 of Irrigation Water to the Contractor shall be governed by subdivision (b) of this Article, and the
200 renewal of this Contract insofar as it pertains to the furnishing of M&I Water to the Contractor shall
201 be governed by subdivision (c) of this Article. [Contractor Specific]

202 (b) (1) Under terms and conditions of a renewal contract that are mutually
203 agreeable to the parties hereto, and upon a determination by the Contracting Officer that at the time
204 of contract renewal the conditions set forth in subdivision (b)(2) of this Article are met, and subject to
205 Federal and State law, this Contract, insofar as it pertains to the furnishing of Irrigation Water to the
206 Contractor, shall be renewed for a period of 25 years.

207 (2) The conditions which must be met for this Contract to be renewed are:

7 Contractor specific

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208 (i) the Contractor has prepared a water conservation plan that has been determined by the Contracting
209 Officer in accordance with Article 26 of this Contract to meet the conservation and efficiency criteria
210 for evaluating such plans established under Federal law; (ii) the Contractor is implementing an
211 effective water conservation and efficiency program based on the Contractor's water conservation
212 plan as required by Article 26 of this Contract; (iii) the Contractor is operating and maintaining all
213 water measuring devices and implementing all water measurement methods as approved by the
214 Contracting Officer pursuant to Article 6 of this Contract; (iv) the Contractor has reasonably and
215 beneficially used the Project Water supplies made available to it and, based on projected demands, is
216 reasonably anticipated and expects fully to utilize for reasonable and beneficial use the quantity of
217 Project Water to be made available to it pursuant to such renewal; (v) the Contractor is complying
218 with all terms and conditions of this Contract; and (vi) the Contractor has the physical and legal
219 ability to deliver Project Water⁸.

220 (3) The terms and conditions of the renewal contract described in
221 subdivision (b)(1) of this Article and any subsequent renewal contracts shall be developed consistent
222 with the parties' respective legal rights and obligations, and in consideration of all relevant facts and
223 circumstances, as those circumstances exist at the time of renewal, including, without limitation, the
224 Contractor's need for continued delivery of Project Water; environmental conditions affected by

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225 implementation of the Contract to be renewed, and specifically changes in those conditions that
226 occurred during the life of the Contract to be renewed; the Secretary's progress toward achieving the
227 purposes of the CVPIA as set out in Section 3402 and in implementing the specific provisions of the
228 CVPIA; and current and anticipated economic circumstances of the region served by the Contractor.

229 (c) This Contract, insofar as it pertains to the furnishing of M&I Water to the
230 Contractor, shall be renewed for successive periods of up to 40 years each, which periods shall be
231 consistent with the then-existing policy, under terms and conditions mutually agreeable to the parties
232 and consistent with Federal and State law. [Contractor Specific] The Contractor shall be afforded
233 the opportunity to comment to the Contracting Officer on the proposed adoption and application of
234 any revised Reclamation-wide policy applicable to the delivery of M&I Water that would limit the
235 term of any subsequent renewal contract with the Contractor for the furnishing of M&I Water to less
236 than 40 years.

237 (d) **The Contracting Officer shall make a determination ten years after the**
238 **date of execution of this Contract, and every five years thereafter during the term of this**
239 **Contract, of whether a conversion to a contract under said subsection 9(d) can be accomplished**
240 **pursuant to the Act of July 2, 1956 (Public Law 643). The Contracting Officer shall also make a**
241 **determination ten years after the date of execution of this Contract, and every five years**

8 Refer to footnote 1 with respect to contractor capability to take delivery of water

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242 thereafter during the term of this Contract, of whether a conversion to a contract under
243 subsection 9 (c)(1) of the Reclamation Project Act of 1939 can be accomplished.
244 Notwithstanding any provision of this Contract, the Contractor reserves and shall have all
245 rights and benefits under Public Law 643. The Contracting Officer anticipates that during the
246 term of this contract, all authorized Project construction expected to occur will have occurred,
247 and on that basis the Contracting Officer agrees upon such completion to allocate all costs that
248 are properly assignable to the Contractor, and agrees further that, at any time after such
249 allocation is made, and subject to satisfaction of the condition set out in this subdivision, this
250 Contract shall, at the request of the Contractor, be converted to a contract under subsection
251 9(d) or 9(c)(1), whichever is applicable, of the Reclamation Project Act of 1939, subject to
252 applicable Federal law and under stated terms and conditions mutually agreeable to the
253 Contractor and the Contracting Officer. A condition for such conversion to occur shall be a
254 determination by the Contracting Officer that, account being taken of the amount credited to
255 return by the Contractor as provided for under Federal Reclamation law, the remaining
256 amount of construction costs assignable for ultimate return by the Contractor can probably be
257 repaid to the United States within the term of a contract under said subsection 9(d) or 9(c)(1),
258 whichever is applicable. If the remaining amount of costs that are properly assignable to the

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259 **Contractor cannot be determined during the term of this Contract, the Contracting Officer**
260 **shall notify the Contractor, and provide the reason(s) why such a determination could not be**
261 **made. Further, the Contracting Officer shall make such a determination as soon thereafter as**
262 **possible so as to permit, upon request of the Contractor and satisfaction of the condition set out**
263 **above, conversion to a contract under said subsection 9(d) or 9(c)(1), whichever is applicable.**
264 **In the event such determination of costs has not been made at a time which allows conversion of**
265 **this Contract during the term of this Contract or the Contractor has not requested conversion**
266 **of this Contract within such term, the parties shall incorporate in any subsequent renewal**
267 **contract as described in subdivision (b) of this Article a provision that carries forth in**
268 **substantially identical terms the provisions of this subdivision.**

269 WATER TO BE MADE AVAILABLE AND DELIVERED TO THE CONTRACTOR

270 3. (a) During each Year, consistent with all applicable State water rights, permits,
271 and licenses; Federal law; and subject to the provisions set forth in Articles 11 and 12 of this
272 Contract, the Contracting Officer shall make available for delivery to the Contractor **27,000** acre-feet
273 of Project Water for irrigation and M&I purposes. Water Delivered to the Contractor in accordance
274 with this subdivision shall be scheduled and paid for pursuant to the provisions of Articles 4 and 7 of
275 this Contract.

276 (b) Because the capacity of the Project to deliver Project Water has been

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277 constrained in recent years and may be constrained in the future due to many factors including
278 hydrologic conditions and implementation of Federal and State laws, the likelihood of the Contractor
279 actually receiving the amount of water set out in subdivision (a) of this Article in any given Year is
280 uncertain. The Contracting Officer's most recent modeling referenced in the PEIS projected that the
281 Contract Total set forth in this Contract will not be available to the Contractor in many years. During
282 the most recent five years, the Recent Historic Average of Water Made Available to the Contractor
283 was _____ acre-feet. Nothing in subdivision (b) of this Article shall affect the rights and obligations
284 of the parties under any provision of this Contract.

285 (c) The Contractor shall utilize the Project Water in accordance with all applicable
286 legal requirements.

287 (d) The Contractor shall make reasonable and beneficial use of all Project Water
288 or other water furnished pursuant to subdivision (f) of this Article. Groundwater recharge programs
289 (direct, indirect, or in lieu), groundwater banking programs, surface water storage programs, and
290 other similar programs utilizing Project Water or other water furnished pursuant to this Contract
291 conducted within the Contractor's Service Area which are consistent with applicable State law and
292 result in use consistent with Federal Reclamation law will be allowed; Provided, That any direct
293 recharge program(s) is (are) described in the Contractor's water conservation plan submitted
294 pursuant to Article 26 of this Contract; Provided, further, That such water conservation plan

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295 demonstrates sufficient lawful uses exist in the Contractor’s Service Area so that using a long-term
296 average, the quantity of Delivered Water is demonstrated to be reasonable for such uses and in
297 compliance with Federal Reclamation law. Groundwater recharge programs, groundwater banking
298 programs, surface water storage programs, and other similar programs utilizing Project Water or
299 other water furnished pursuant to this Contract conducted outside the Contractor’s Service Area may
300 be permitted upon written approval of the Contracting Officer, which approval will be based upon
301 environmental documentation, Project Water rights, and Project operational concerns. The
302 Contracting Officer will address such concerns in regulations, policies, or guidelines.

303 (e) The Contractor shall comply with requirements applicable to the Contractor in
304 biological opinion(s) prepared as a result of a consultation regarding the execution of this Contract
305 undertaken pursuant to Section 7 of the Endangered Species Act of 1973 (ESA), as amended, that are
306 within the Contractor’s legal authority to implement. The Existing Contract, which evidences in
307 excess of ___ years of diversions for irrigation and/or M&I purposes⁹ of the quantities of water
308 provided in subdivision (a) of Article 3 of this Contract, will be considered in developing an
309 appropriate baseline for the biological assessments prepared pursuant to the ESA, and any other
310 needed environmental review. Nothing herein shall be construed to prevent the Contractor from
311 challenging or seeking judicial relief in a court of competent jurisdiction with respect to any

⁹ Contractor Specific Issue. The type of water diverted will be addressed on a contractor specific basis

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312 biological opinion or other environmental documentation referred to in this Article.¹⁰

313 (f) Following the declaration of Water Made Available under Article 4 of this
314 Contract, the Contracting Officer will make a determination whether Project Water, or other water
315 available to the Project, can be made available to the Contractor in addition to the Contract Total
316 under this Article during the Year without adversely impacting other Project Contractors. At the
317 request of the Contractor, the Contracting Officer will consult with the Contractor prior to making
318 such a determination. If the Contracting Officer determines that Project Water, or other water
319 available to the Project, can be made available to the Contractor, the Contracting Officer will
320 announce the availability of such water and shall so notify the Contractor as soon as practical. The
321 Contracting Officer will thereafter meet with the Contractor and other Project Contractors capable of
322 taking such water to determine the most equitable and efficient allocation of such water. If the
323 Contractor requests the delivery of any quantity of such water, the Contracting Officer shall make
324 such water available to the Contractor in accordance with applicable statutes, regulations, guidelines,
325 and policies. Subject to existing long-term contractual commitments, water rights and operational
326 constraints, long-term Project Contractors shall have a first right to acquire such water, including
327 Project Water made available pursuant to Section 215 of the RRA

328 (g) The Contractor may request permission to reschedule for use during the

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329 subsequent Year some or all of the Water Made Available to the Contractor during the current Year,
330 referred to as "rescheduled water." The Contractor may request permission to use during the current
331 Year a quantity of Project Water which may be made available by the United States to the Contractor
332 during the subsequent Year referred to as "preuse." The Contracting Officer's written approval may
333 permit such uses in accordance with applicable statutes, regulations, guidelines, and policies.

334 (h) The Contractor's right pursuant to Federal Reclamation law and applicable
335 State law to the reasonable and beneficial use of Water Delivered pursuant to this Contract during the
336 term thereof and any subsequent renewal contracts, as described in Article 2 of this Contract, during
337 the terms thereof shall not be disturbed so long as the Contractor shall fulfill all of its obligations
338 under this Contract and any renewals thereof. Nothing in the preceding sentence shall affect the
339 Contracting Officer's ability to impose shortages under Article 11 or subdivision (b) of Article 12 of
340 this Contract or applicable provisions of any subsequent renewal contracts.

341 (i) Project Water furnished to the Contractor pursuant to this Contract may be
342 delivered for purposes other than those described in subdivisions (m) and (o) of Article 1 of this
343 Contract upon written approval by the Contracting Officer in accordance with the terms and
344 conditions of such approval.

345 (j) The Contracting Officer shall make reasonable efforts to protect the water

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346 rights necessary for the Project and to provide the water available under this Contract. The
347 Contracting Officer shall not object to participation by the Contractor, in the capacity and to the
348 extent permitted by law, in administrative proceedings related to the Project Water rights; Provided,
349 however, That the Contracting Officer retains the right to object to the substance of the Contractor's
350 position in such a proceeding; Provided, further, That in such proceedings the Contracting Officer
351 shall recognize the Contractor has a legal right under the terms of this Contract to use Project Water.

352 TIME FOR DELIVERY OF WATER

353 4. (a) On or about February 20 of each Calendar Year, the Contracting Officer shall
354 announce the Contracting Officer's expected declaration of the Water Made Available. Such
355 declaration will be expressed in terms of both Water Made Available and the Recent Historic
356 Average and will be updated monthly, and more frequently if necessary, based on then-current
357 operational and hydrologic conditions and a new declaration with changes, if any, to the Water Made
358 Available will be made. The Contracting Officer shall provide forecasts of Project operations and the
359 basis of the estimate, with relevant supporting information, upon the written request of the
360 Contractor. Concurrently with the declaration of the Water Made Available, the Contracting Officer
361 shall provide the Contractor with the updated Recent Historic Average.

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362 (b)¹¹ On or before each March 1 and at such other times as necessary, the Contractor
363 shall submit to the Contracting Officer a written schedule, satisfactory to the Contracting Officer,
364 showing the monthly quantities of Project Water to be delivered by the United States to the
365 Contractor pursuant to this Contract for the Year commencing on such March 1. The Contracting
366 Officer shall use all reasonable means to deliver Project Water according to the approved schedule
367 for the Year commencing on such March 1.

368 (c) The Contractor shall not schedule Project Water in excess of the quantity of
369 Project Water the Contractor intends to put to reasonable and beneficial use within the Contractor's
370 Service Area or sell, transfer or exchange pursuant to Article 9 of this Contract during any Year.

371 (d) Subject to the conditions set forth in subdivision (a) of Article 3 of this
372 Contract, the United States shall deliver Project Water to the Contractor in accordance with the initial
373 schedule submitted by the Contractor pursuant to subdivision (b) of this Article, or any written
374 revision(s), satisfactory to the Contracting Officer, thereto submitted within a reasonable time prior
375 to the date(s) on which the requested change(s) is/are to be implemented.

376 POINT OF DIVERSION AND RESPONSIBILITY FOR DISTRIBUTION OF WATER

377 5. (a) Project Water scheduled pursuant to subdivision (b) of Article 4 of this
378 Contract shall be delivered to the Contractor at a point or points and any additional point or points of

¹¹ Contractor Specific with respect to binding agreement contractors

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379 delivery either on Project facilities or another location or locations mutually agreed to in writing by
380 the Contracting Officer and the Contractor: **Provided**, That prior to furnishing Project Water to
381 the Contractor on the San Luis Canal at about milepost 108.20, the Contractor shall obtain all
382 necessary permits and/or licenses for the construction of the turnout facility on the San Luis
383 Canal and complete the construction thereof. The Contracting Officer shall cooperate with the
384 Contractor in obtaining any necessary permits and/or licenses.

385 (b) The Contracting Officer, the Operating Non-Federal Entity, or other
386 appropriate entity shall make all reasonable efforts to maintain sufficient flows and levels of water in
387 the Delta-Mendota Canal¹² and/or San Luis Canal to deliver Project Water to the Contractor at
388 specific turnouts established pursuant to subdivision (a) of this Article.

389 (c) The Contractor shall deliver Irrigation Water in accordance with any
390 applicable land classification provisions of Federal Reclamation law and the associated regulations.
391 The Contractor shall not deliver Project Water to land outside the Contractor's Service Area unless
392 approved in advance by the Contracting Officer.

393 (d) All Water Delivered to the Contractor pursuant to this Contract shall be
394 measured and recorded with equipment furnished, installed, operated, and maintained by the United
395 States, the Operating Non-Federal Entity or other appropriate entity as designated by the Contracting

¹² Contractor specific/Unit specific issue with respect to including other appropriate facilities

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396 Officer (hereinafter [other appropriate entity]) at the point or points of delivery established pursuant
397 to subdivision (a) of this Article. Upon the request of either party to this Contract, the Contracting
398 Officer shall investigate, or cause to be investigated by the responsible Operating Non-Federal
399 Entity, the accuracy of such measurements and shall take any necessary steps to adjust any errors
400 appearing therein. For any period of time when accurate measurements have not been made, the
401 Contracting Officer shall consult with the Contractor and the responsible Operating Non-Federal
402 Entity prior to making a final determination of the quantity delivered for that period of time.

403 (e) Neither the Contracting Officer, any Operating Non-Federal Entity nor other
404 appropriate entity shall be responsible for the control, carriage, handling, use, disposal, or distribution
405 of Water Delivered to the Contractor pursuant to this Contract beyond the delivery points specified in
406 subdivision (a) of this Article. The Contractor shall indemnify the United States, its officers,
407 employees, agents, and assigns on account of damage or claim of damage of any nature whatsoever
408 for which there is legal responsibility, including property damage, personal injury, or death arising
409 out of or connected with the control, carriage, handling, use, disposal, or distribution of such Water
410 Delivered beyond such delivery points, except for any damage or claim arising out of: (i) acts or
411 omissions of the Contracting Officer or any of its officers, employees, agents, or assigns, including
412 any responsible Operating Non-Federal Entity, with the intent of creating the situation resulting in

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413 any damage or claim; (ii) willful misconduct of the Contracting Officer or any of its officers,
414 employees, agents, or assigns, including any responsible Operating Non-Federal Entity; (iii)
415 negligence of the Contracting Officer or any of its officers, employees, agents, or assigns including
416 any responsible Operating Non-Federal Entity; or (iv) damage or claims resulting from a malfunction
417 of facilities owned and/or operated by the United States or responsible Operating Non-Federal Entity;
418 Provided, That the Contractor is not the Operating Non-Federal Entity that owned or operated the
419 malfunctioning facility(ies) from which the damage claim arose.

420 MEASUREMENT OF WATER WITHIN THE CONTRACTOR'S SERVICE AREA¹³

421 6. (a) The Contractor has established a measuring program satisfactory to the
422 Contracting Officer. The Contractor shall ensure that all surface water delivered for irrigation
423 purposes within the Contractor's Service Area is measured at each agricultural turnout and such
424 water delivered for M&I purposes is measured at each M&I service connection. The water
425 measuring devices or water measuring methods of comparable effectiveness must be acceptable to
426 the Contracting Officer. The Contractor shall be responsible for installing, operating, and
427 maintaining and repairing all such measuring devices and implementing all such water measuring
428 methods at no cost to the United States. The Contractor shall use the information obtained from such
429 water measuring devices or water measuring methods to ensure its proper management of the water,

13 Contractor specific issue which may require additional language

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430 to bill water users for water delivered by the Contractor; and, if applicable, to record water delivered
431 for M&I purposes by customer class as defined in the Contractor's water conservation plan provided
432 for in Article 26 of this Contract. Nothing herein contained, however, shall preclude the Contractor
433 from establishing and collecting any charges, assessments, or other revenues authorized by California
434 law. The Contractor shall include a summary of all its annual surface water deliveries in the annual
435 report described in subdivision (c) of Article 26.

436 (b) To the extent the information has not otherwise been provided, upon execution
437 of this Contract, the Contractor shall provide to the Contracting Officer a written report describing
438 the measurement devices or water measuring methods being used or to be used to implement
439 subdivision (a) of this Article and identifying the agricultural turnouts and the M&I service
440 connections or alternative measurement programs approved by the Contracting Officer, at which such
441 measurement devices or water measuring methods are being used, and, if applicable, identifying the
442 locations at which such devices and/or methods are not yet being used including a time schedule for
443 implementation at such locations. The Contracting Officer shall advise the Contractor in writing
444 within 60 days as to the adequacy and necessary modifications, if any, of the measuring devices or
445 water measuring methods identified in the Contractor's report and if the Contracting Officer does not
446 respond in such time, they shall be deemed adequate. If the Contracting Officer notifies the

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447 Contractor that the measuring devices or methods are inadequate, the parties shall within 60 days
448 following the Contracting Officer's response, negotiate in good faith the earliest practicable date by
449 which the Contractor shall modify said measuring devices and/or measuring methods as required by
450 the Contracting Officer to ensure compliance with subdivision (a) of this Article.

451 (c) All new surface water delivery systems installed within the Contractor's
452 Service Area after the effective date of this Contract shall also comply with the measurement
453 provisions described in subdivision (a) of this Article.

454 (d) The Contractor shall inform the Contracting Officer and the State of California
455 in writing by April 30 of each Year of the monthly volume of surface water delivered within the
456 Contractor's Service Area during the previous Year.

457 (e) The Contractor shall inform the Contracting Officer and the Operating Non-
458 Federal Entity on or before the 20th calendar day of each month of the quantity of Irrigation Water
459 and M&I Water taken during the preceding month.

460 RATES AND METHOD OF PAYMENT FOR WATER

461 7. (a) The Contractor shall pay the United States as provided in this Article for all
462 Delivered Water at Rates, Charges, and the Tiered Pricing Component established in accordance
463 with: (i) the Secretary's ratesetting policy for Irrigation Water adopted in 1988 and the Secretary's
464 then-existing ratesetting policy for M&I Water. Such ratesetting policies shall be amended,

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465 modified, or superseded only through a public notice and comment procedure; (ii) applicable Federal
466 Reclamation law and associated rules and regulations, or policies; and (iii) other applicable
467 provisions of this Contract. Payment shall be made by cash transaction, wire transfer, or any other
468 mechanism as may be agreed to in writing by the Contractor and the Contracting Officer. The Rates,
469 Charges, and Tiered Pricing Component applicable to the Contractor upon execution of this Contract
470 are set forth in Exhibit [B], as may be revised annually.

471 (b) The Contracting Officer shall notify the Contractor of the Rates, Charges, and
472 Tiered Pricing Components as follows:

473 (1) Prior to July 1 of each Calendar Year, the Contracting Officer shall
474 provide the Contractor an estimate of the Charges for Project Water that will be applied to the period
475 October 1, of the current Calendar Year, through September 30, of the following Calendar Year, and
476 the basis for such estimate. The Contractor shall be allowed not less than two months to review and
477 comment on such estimates. On or before September 15 of each Calendar Year, the Contracting
478 Officer shall notify the Contractor in writing of the Charges to be in effect during the period October
479 1 of the current Calendar Year, through September 30, of the following Calendar Year, and such
480 notification shall revise Exhibit [B].

481 (2) Prior to October 1 of each Calendar Year, the Contracting Officer shall
482 make available to the Contractor an estimate of the Rates and Tiered Pricing Components for Project

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483 Water for the following Year and the computations and cost allocations upon which those Rates are
484 based. The Contractor shall be allowed not less than two months to review and comment on such
485 computations and cost allocations. By December 31 of each Calendar Year, the Contracting Officer
486 shall provide the Contractor with the final Rates and Tiered Pricing Components to be in effect for
487 the upcoming Year, and such notification shall revise Exhibit [B].

488 (c) At the time the Contractor submits the initial schedule for the delivery of
489 Project Water for each Year pursuant to subdivision (b) of Article 4 of this Contract, the Contractor
490 shall make an advance payment to the United States equal to the total amount payable pursuant to the
491 applicable Rate(s) set under subdivision (a) of this Article, for the Project Water scheduled to be
492 delivered pursuant to this Contract during the first two calendar months of the Year. Before the end
493 of the first month and before the end of each calendar month thereafter, the Contractor shall make an
494 advance payment to the United States, at the Rate(s) set under subdivision (a) of this Article, for the
495 Water Scheduled to be delivered pursuant to this Contract during the second month immediately
496 following. Adjustments between advance payments for Water Scheduled and payments at Rates due
497 for Water Delivered shall be made before the end of the following month; Provided, That any revised
498 schedule submitted by the Contractor pursuant to Article 4 of this Contract which increases the
499 amount of Water Delivered pursuant to this Contract during any month shall be accompanied with
500 appropriate advance payment, at the Rates then in effect, to assure that Project Water is not delivered

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501 to the Contractor in advance of such payment. In any month in which the quantity of Water
502 Delivered to the Contractor pursuant to this Contract equals the quantity of Water Scheduled and paid
503 for by the Contractor, no additional Project Water shall be delivered to the Contractor unless and
504 until an advance payment at the Rates then in effect for such additional Project Water is made. Final
505 adjustment between the advance payments for the Water Scheduled and payments for the quantities
506 of Water Delivered during each Year pursuant to this Contract shall be made as soon as practicable
507 but no later than April 30th of the following Year, or 60 days after the delivery of Project Water
508 rescheduled under subdivision (g) of Article 3 of this Contract if such water is not delivered by the
509 last day of February.

510 (d) The Contractor shall also make a payment in addition to the Rate(s) in
511 subdivision (c) of this Article to the United States for Water Delivered, at the Charges and the
512 appropriate Tiered Pricing Component then in effect, before the end of the month following the
513 month of delivery; Provided, That the Contractor may be granted an exception from the Tiered
514 Pricing Component pursuant to subdivision (j)(2) of this Article. The payments shall be consistent
515 with the quantities of Irrigation Water and M&I Water Delivered as shown in the water delivery
516 report for the subject month prepared by the Operating Non-Federal Entity or, if there is no Operating
517 Non-Federal Entity, by the Contracting Officer. The water delivery report shall be deemed a bill for
518 the payment of Charges and the applicable Tiered Pricing Component for Water Delivered.

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519 Adjustment for overpayment or underpayment of Charges shall be made through the adjustment of
520 payments due to the United States for Charges for the next month. Any amount to be paid for past
521 due payment of Charges and the Tiered Pricing Component shall be computed pursuant to Article 20
522 of this Contract.

523 (e) The Contractor shall pay for any Water Delivered under subdivision (d), (f), or
524 (g) of Article 3 of this Contract as determined by the Contracting Officer pursuant to applicable
525 statutes, associated regulations, any applicable provisions of guidelines or ratesetting policies;
526 Provided, That the Rate for Water Delivered under subdivision (d) or (f) of Article 3 of this Contract
527 shall be no more than the otherwise applicable Rate for Irrigation Water or M&I Water under
528 subdivision (a) of this Article.

529 (f) Payments to be made by the Contractor to the United States under this
530 Contract may be paid from any revenues available to the Contractor.

531 (g) All revenues received by the United States from the Contractor relating to the
532 delivery of Project Water or the delivery of non-Project water through Project facilities shall be
533 allocated and applied in accordance with Federal Reclamation law and the associated rules or
534 regulations, and the then current Project ratesetting policies for M&I Water or Irrigation Water.

535 (h) The Contracting Officer shall keep its accounts pertaining to the administration
536 of the financial terms and conditions of its long-term contracts, in accordance with applicable Federal

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537 standards, so as to reflect the application of Project costs and revenues. The Contracting Officer
538 shall, each Year upon request of the Contractor, provide to the Contractor a detailed accounting of all
539 Project and Contractor expense allocations, the disposition of all Project and Contractor revenues,
540 and a summary of all water delivery information. The Contracting Officer and the Contractor shall
541 enter into good faith negotiations to resolve any discrepancies or disputes relating to accountings,
542 reports, or information.

543 (i) The parties acknowledge and agree that the efficient administration of this
544 Contract is their mutual goal. Recognizing that experience has demonstrated that mechanisms,
545 policies, and procedures used for establishing Rates, Charges, and Tiered Pricing Components,
546 and/or for making and allocating payments, other than those set forth in this Article may be in the
547 mutual best interest of the parties, it is expressly agreed that the parties may enter into agreements to
548 modify the mechanisms, policies, and procedures for any of those purposes while this Contract is in
549 effect without amending this Contract.

550 (j) (1) Beginning at such time as deliveries of Project Water in a Year exceed
551 80 percent of the Contract Total, then before the end of the month following the month of delivery
552 the Contractor shall make an additional payment to the United States equal to the applicable Tiered
553 Pricing Component. The Tiered Pricing Component for the amount of Water Delivered in excess of
554 80 percent of the Contract Total, but less than or equal to 90 percent of the Contract Total, shall equal

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555 the one-half of the difference between the Rate established under subdivision (a) of this Article and
556 the Irrigation Full Cost Water Rate or M&I Full Cost Water Rate, whichever is applicable. The
557 Tiered Pricing Component for the amount of Water Delivered which exceeds 90 percent of the
558 Contract Total shall equal the difference between (i) the Rate established under subdivision (a) of this
559 Article and (ii) the Irrigation Full Cost Water Rate or M&I Full Cost Water Rate, whichever is
560 applicable.

561 (2) Subject to the Contracting Officer's written approval, the Contractor
562 may request and receive an exemption from such Tiered Pricing Components for Project Water
563 delivered to produce a crop which the Contracting Officer determines will provide significant and
564 quantifiable habitat values for waterfowl in fields where the water is used and the crops are produced;
565 Provided, That the exemption from the Tiered Pricing Components for Irrigation Water shall apply
566 only if such habitat values can be assured consistent with the purposes of CVPIA through binding
567 agreements executed with or approved by the Contracting Officer prior to use of such water.

568 (3) For purposes of determining the applicability of the Tiered Pricing
569 Components pursuant to this Article, Water Delivered shall include Project Water that the Contractor
570 transfers to others but shall not include Project Water transferred to the Contractor.

571 (k) For the term of this Contract, Rates applied under the respective ratesetting
572 policies will be established to recover only reimbursable O&M (including any deficits) and capital

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573 costs of the Project, as those terms are used in the then-current Project ratesetting policies, and
574 interest, where appropriate, except in instances where a minimum Rate is applicable in accordance
575 with the relevant Project ratesetting policy. Changes of significance in practices which implement
576 the Contracting Officer's ratesetting policies will not be implemented until the Contracting Officer
577 has provided the Contractor an opportunity to discuss the nature, need, and impact of the proposed
578 change.

579 (l) Except as provided in subsections 3405(a)(1)(B) and 3405(f) of the CVPIA,
580 the Rates for Project Water transferred by the Contractor shall be the Contractor's Rates adjusted
581 upward or downward to reflect the changed costs of delivery (if any) of the transferred Project Water
582 to the transferee's point of delivery in accordance with the then applicable CVP Ratesetting Policy.
583 If the Contractor is receiving lower Rates and Charges because of inability to pay and is transferring
584 Project Water to another entity whose Rates and Charges are not adjusted due to inability to pay, the
585 Rates and Charges for transferred Project Water shall be the Contractor's Rates and Charges
586 unadjusted for inability to pay.

587 (m) Pursuant to the Act of October 27, 1986 (100 Stat. 3050), the Contracting
588 Officer is authorized to adjust determinations of ability to pay every five years.

589 (n) **The Contractor asserts that it is not legally obligated to pay any Project**
590 **deficits claimed by the United States to have accrued as of the date of this Contract or deficit-**

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591 **related interest charges thereon.** By entering into this Contract, the Contractor does not waive
592 any legal rights or remedies that it may have with respect to such disputed issues.
593 Notwithstanding the execution of this Contract and payments made hereunder, the Contractor
594 may challenge in the appropriate administrative or judicial forums: (1) **the existence**, the
595 computation, or imposition of any deficit charges accruing during the term of the Existing
596 Contract; (2) interest accruing on any such deficits; (3) the inclusion of any such deficit charges
597 or interest in the Rates; (4) the application by the United States of payments made by the
598 Contractor under its Existing Contract; and (5) the application of such payments in the Rates.
599 The Contracting Officer agrees that the Contractor shall be entitled to the benefit of any
600 administrative or judicial ruling in favor of any other **Project M&I** contractor on any of these
601 issues, **and credits for payments heretofore made**, provided that the basis for such ruling is
602 applicable to the Contractor. [Contractor Specific]

603 NON-INTEREST BEARING OPERATION AND MAINTENANCE DEFICITS¹⁴

604 8. The Contractor and the Contracting Officer concur that, as of the effective date of this
605 Contract, the Contractor has no non-interest bearing O&M deficits and shall have no further liability
606 therefore.

14 Contractor specific.

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SALES, TRANSFERS, OR EXCHANGES OF WATER

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9. (a) The right to receive Project Water provided for in this Contract may be sold, transferred, or exchanged to others for reasonable and beneficial uses within the State of California if such sale, transfer, or exchange is authorized by applicable Federal and State laws, and applicable guidelines or regulations then in effect. No sale, transfer, or exchange of Project Water under this Contract may take place without the prior written approval of the Contracting Officer, except as provided for in subdivision (b) of this Article, and no such sales, transfers, or exchanges shall be approved absent all appropriate environmental documentation, including but not limited to, documents prepared pursuant to the NEPA and the ESA. Such environmental documentation should include, as appropriate, an analysis of groundwater impacts and economic and social effects, including environmental justice, of the proposed water transfers on both the transferor and transferee.

(b) In order to facilitate efficient water management by means of water transfers of the type historically carried out among Project Contractors located within the same geographical area and to allow the Contractor to participate in an accelerated water transfer program during the term of this Contract, the Contracting Officer shall prepare, as appropriate, all necessary environmental documentation, required by Federal law, including but not limited to, the NEPA and the ESA analyzing annual transfers within such geographical areas and the Contracting Officer shall determine whether such transfers comply with applicable law. Following the completion of the

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625 environmental documentation, such transfers addressed in such documentation shall be conducted
626 with advance notice to the Contracting Officer, but shall not require prior written approval by the
627 Contracting Officer. Such environmental documentation and the Contracting Officer's compliance
628 determination shall be reviewed every five years and updated, as necessary, prior to the expiration of
629 the then existing five year period. All subsequent environmental documentation shall include an
630 alternative to evaluate not less than the quantity of Project Water historically transferred within the
631 same geographical area.

632 (c) For a water transfer to qualify under subdivision (b) of this Article, such water
633 transfer must: (i) be for irrigation purposes for lands irrigated within the previous three years, for
634 M&I use, groundwater recharge, groundwater banking, or similar groundwater activities, surface
635 water storage, or fish and wildlife resources; not lead to land conversion; and be delivered to
636 established cropland, wildlife refuges, groundwater basins or M&I use; (ii) occur within a single
637 Year; (iii) occur between a willing seller and a willing buyer; (iv) convey water through existing
638 facilities with no new construction or modifications to facilities and be between existing Project
639 Contractors and/or the Contractor and the United States, Department of the Interior; and (v) comply
640 with all applicable Federal, State, and local or tribal laws and requirements imposed for protection of
641 the environment and Indian Trust Assets, as defined under Federal law.

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642 APPLICATION OF PAYMENTS AND ADJUSTMENTS

643 10. (a) The amount of any overpayment by the Contractor of the Contractor's O&M,
644 capital, and deficit (if any) obligations for the Year shall be applied first to any current liabilities of
645 the Contractor arising out of this Contract then due and payable. Overpayments of more than \$1,000
646 shall be refunded at the Contractor's request. In lieu of a refund, any amount of such overpayment at
647 the option of the Contractor, may be credited against amounts to become due to the United States by
648 the Contractor. With respect to overpayment, such refund or adjustment shall constitute the sole
649 remedy of the Contractor or anyone having or claiming to have the right to the use of any of the
650 Project Water supply provided for herein. All credits and refunds of overpayments shall be made
651 within 30 days of the Contracting Officer obtaining direction as to how to credit or refund such
652 overpayment in response to the notice to the Contractor that it has finalized the accounts for the Year
653 in which the overpayment was made.

654 (b) All advances for miscellaneous costs incurred for work requested by the
655 Contractor pursuant to Article 25 of this Contract shall be adjusted to reflect the actual costs when
656 the work has been completed. If the advances exceed the actual costs incurred, the difference will be
657 refunded to the Contractor. If the actual costs exceed the Contractor's advances, the Contractor will
658 be billed for the additional costs pursuant to Article 25.

659 TEMPORARY REDUCTIONS--RETURN FLOWS

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660 11. (a) Subject to: (i) the authorized purposes and priorities of the Project and the
661 requirements of Federal law and (ii) the obligations of the United States under existing contracts, or
662 renewals thereof, providing for water deliveries from the Project, the Contracting Officer shall make
663 all reasonable efforts to optimize Project Water deliveries to the Contractor as provided in this
664 Contract.

665 (b) The Contracting Officer or Operating Non-Federal Entity may temporarily
666 discontinue or reduce the quantity of Water Delivered to the Contractor as herein provided for the
667 purposes of investigation, inspection, maintenance, repair, or replacement of any of the Project
668 facilities or any part thereof necessary for the delivery of Project Water to the Contractor, but so far
669 as feasible the Contracting Officer or Operating Non-Federal Entity will give the Contractor due
670 notice in advance of such temporary discontinuance or reduction, except in case of emergency, in
671 which case no notice need be given; Provided, That the United States shall use its best efforts to
672 avoid any discontinuance or reduction in such service. Upon resumption of service after such
673 reduction or discontinuance, and if requested by the Contractor, the United States will, if possible,
674 deliver the quantity of Project Water which would have been delivered hereunder in the absence of
675 such discontinuance or reduction.

676 (c) The United States reserves the right to all seepage and return flow water
677 derived from Water Delivered to the Contractor hereunder which escapes or is discharged beyond the

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678 Contractor's Service Area; Provided, That this shall not be construed as claiming for the United
679 States any right to seepage or return flow being put to reasonable and beneficial use pursuant to this
680 Contract within the Contractor's Service Area¹⁵ by the Contractor or those claiming by, through, or
681 under the Contractor.

682 CONSTRAINTS ON THE AVAILABILITY OF WATER

683 12. (a) In its operation of the Project, the Contracting Officer will use all reasonable
684 means to guard against a Condition of Shortage in the quantity of water to be made available to the
685 Contractor pursuant to this Contract. In the event the Contracting Officer determines that a
686 Condition of Shortage appears probable, the Contracting Officer will notify the Contractor of said
687 determination as soon as practicable.

688 (b) If there is a Condition of Shortage because of errors in physical operations of
689 the Project, drought, other physical causes beyond the control of the Contracting Officer or actions
690 taken by the Contracting Officer to meet legal obligations then, except as provided in subdivision (a)
691 of Article 18 of this Contract, no liability shall accrue against the United States or any of its officers,
692 agents, or employees for any damage, direct or indirect, arising therefrom.

693 (c) In any Year in which there may occur a Condition of Shortage for any of the
694 reasons specified in subdivision (b) of this Article, the Contracting Officer shall apportion Irrigation

¹⁵Refer to footnote 3

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695 Water among the Contractor and others entitled to Irrigation Water from Delta Division Facilities

696 under long-term water service or repayment contracts as follows:

697 (1) A determination shall be made of the total quantity of Irrigation Water
698 estimated to be scheduled or actually scheduled under subdivision (b) of Article 3 of this Contract
699 and under all other long-term water service or repayment contracts then in force for the delivery of
700 Irrigation Water by the United States from Delta Division Facilities during the relevant Year, the
701 quantity so determined being hereinafter referred to as the contractual commitments;

702 (2) A determination shall be made of the total quantity of Irrigation Water that is
703 available for meeting the contractual commitments, the quantity so determined being hereinafter
704 referred to as the available supply;

705 (3) The total quantity of Irrigation Water estimated to be scheduled or actually
706 scheduled by the Contractor during the relevant Year, under subdivision (b) of Article 4 hereof, shall
707 be divided by the contractual commitments, the quotient thus obtained being hereinafter referred to as
708 the Contractor's proportionate entitlement; and

709 (4) The available supply shall be multiplied by the Contractor's proportionate
710 entitlement and the result shall be the quantity of Irrigation Water required to be delivered by the
711 United States to the Contractor for the relevant Year, but in no event shall such amount exceed the

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712 Contract Total. In the event the Contracting Officer subsequently determines that the Contracting
713 Officer can increase the available supply for delivery from Delta Division Facilities to long-term
714 water service and repayment Contractors during the relevant Year, such additional Irrigation Water
715 shall be apportioned consistent with subparagraphs (1) through (4), inclusive.

716 (d) Project Water furnished under this Contract for M&I purposes will be
717 allocated in accordance with the then existing Project M&I Water Shortage Policy. Such policy shall
718 be amended, modified, or superseded only through a public notice and comment procedure.

719 [Contractor Specific]

720 (e) **By entering into this Contract, the Contractor does not waive any legal**
721 **rights or remedies it may have to file or participate in any administrative or judicial**
722 **proceeding contesting (i) the sufficiency of the manner in which any Project M&I Water**
723 **Shortage Policy adopted after the effective date of this Contract was promulgated; (ii) the**
724 **substance of such policy; or (iii) the applicability of such a policy. By agreeing to the foregoing,**
725 **the Contracting Officer does not waive any legal defenses or remedies that it may then have to**
726 **assert in such a proceeding.**

727 UNAVOIDABLE GROUNDWATER PERCOLATION

728 13. To the extent applicable, the Contractor shall not be deemed to have delivered
729 Irrigation Water to Excess Lands or Ineligible Lands within the meaning of this Contract if such

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730 lands are irrigated with groundwater that reaches the underground strata as an unavoidable result of
731 the delivery of Irrigation Water by the Contractor to Eligible Lands.

732 RULES AND REGULATIONS

733 14. The parties agree that the delivery of Irrigation Water or use of Federal facilities
734 pursuant to this Contract is subject to Federal Reclamation law, including but not limited to, the
735 Reclamation Reform Act of 1982 (43 U.S.C.390aa et seq.), as amended and supplemented, and the
736 rules and regulations promulgated by the Secretary of the Interior under Federal Reclamation law.

737 WATER AND AIR POLLUTION CONTROL

738 15. The Contractor, in carrying out this Contract, shall comply with all applicable water
739 and air pollution laws and regulations of the United States and the State of California, and shall
740 obtain all required permits or licenses from the appropriate Federal, State, or local authorities.

741 QUALITY OF WATER¹⁶

742 16. (a) Project facilities used to deliver Project Water to the Contractor pursuant to
743 this Contract shall be operated and maintained to enable the United States to deliver Project Water to
744 the Contractor in accordance with the water quality standards specified in subsection 2(b) of the Act
745 of August 26, 1937 (50 Stat. 865), as added by Section 101 of the Act of October 27, 1986 (100 Stat.
746 3050) or other existing Federal laws. The United States is under no obligation to construct or furnish
747 water treatment facilities to maintain or to improve the quality of Water Delivered to the Contractor
748 pursuant to this Contract. The United States does not warrant the quality of Water Delivered to the
749 Contractor pursuant to this Contract.

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750 (b) The O&M of Project facilities shall be performed in such manner as is
751 practicable to maintain the quality of raw water made available through such facilities at the highest
752 level reasonably attainable as determined by the Contracting Officer. The Contractor shall be
753 responsible for compliance with all State and Federal water quality standards applicable to surface
754 and subsurface agricultural drainage discharges generated through the use of Federal or Contractor
755 facilities or Project Water provided by the Contractor within the Contractor's Service Area.

756 (c) [San Luis Unit specific issue regarding Drainage language]

757 WATER ACQUIRED BY THE CONTRACTOR
758 OTHER THAN FROM THE UNITED STATES

759 17. (a) Water or water rights now owned or hereafter acquired by the Contractor other
760 than from the United States and Irrigation Water furnished pursuant to the terms of this Contract may
761 be simultaneously transported through the same distribution facilities of the Contractor subject to the
762 following: (i) if the facilities utilized for commingling Irrigation Water and non-Project water were
763 constructed without funds made available pursuant to Federal Reclamation law, the provisions of
764 Federal Reclamation law will be applicable only to the Landholders of lands which receive Irrigation
765 Water; (ii) the eligibility of land to receive Irrigation Water must be established through the
766 certification requirements as specified in the Acreage Limitation Rules and Regulations (43 CFR Part

16 Contractor specific.

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767 426); (iii) the water requirements of Eligible Lands within the Contractor's Service Area can be
768 established and the quantity of Irrigation Water to be utilized is less than or equal to the quantity
769 necessary to irrigate such Eligible Lands; and (iv) if the facilities utilized for commingling Irrigation
770 Water and non-Project water are/were constructed with funds made available pursuant to Federal
771 Reclamation law, the non-Project water will be subject to the acreage limitation provisions of Federal
772 Reclamation law, unless the Contractor pays to the United States the incremental fee described in 43
773 CFR 426.15. In determining the incremental fee, the Contracting Officer will calculate annually the
774 cost to the Federal Government, including interest, of storing or delivering non-Project water, which
775 for purposes of this Contract shall be determined as follows: The quotient shall be the unpaid
776 distribution system costs divided by the total irrigable acreage within the Contractor's Service Area.
777 The incremental fee per acre is the mathematical result of such quotient times the interest rate
778 determined using Section 202 (3) of the Act of October 12, 1982 (96 Stat. 1263). Such incremental
779 fee will be charged to each acre of excess or full cost land within the Contractor's Service Area that
780 receives non-Project water through Federally financed or constructed facilities. The incremental fee
781 calculation methodology will continue during the term of this Contract absent the promulgation of a
782 contrary Reclamation-wide rule, regulation or policy adopted after the Contractor has been afforded
783 the opportunity to review and comment on the proposed rule, regulation or policy. If such rule,
784 regulation or policy is adopted it shall supersede this provision.

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785 (b) Water or water rights now owned or hereafter acquired by the Contractor,
786 other than from the United States may be stored, conveyed and/or diverted through Project facilities,
787 subject to the completion of appropriate environmental documentation, with the approval of the
788 Contracting Officer and the execution of any contract determined by the Contracting Officer to be
789 necessary, consistent with the following provisions:

790 (1) The Contractor may introduce non-Project water into Project facilities
791 and deliver said water to lands within the Contractor's Service Area, including Ineligible Lands,
792 subject to payment to the United States and/or to any applicable Operating Non-Federal Entity of an
793 appropriate rate as determined by the CVP Ratesetting Policy and the RRA, each as amended,
794 modified or superceded from time to time. In addition, if electrical power is required to pump non-
795 Project water through the facilities, the Contractor shall be responsible for obtaining the necessary
796 power and paying the necessary charges therefore.

797 (2) Delivery of such non-Project water in and through Project facilities
798 shall only be allowed to the extent such deliveries do not: (i) interfere with other Project purposes as
799 determined by the Contracting Officer; (ii) reduce the quantity or quality of water available to other
800 Project water service contractors; (iii) interfere with the delivery of contractual water entitlements to
801 any other Project water service contractors; or (iv) interfere with the physical maintenance of the
802 Project facilities.

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803 (3) Neither the United States nor the Operating Non-Federal Entity shall be
804 responsible for control, care or distribution of the non-Project water before it is introduced into or
805 after it is delivered from the Project facilities. The Contractor hereby releases and agrees to defend
806 and indemnify the United States and the Operating Non-Federal Entity, and their respective officers,
807 agents, and employees, from any claim for damage to persons or property, direct or indirect, resulting
808 from the Contractor's or its officers', employees', agents' or assigns', act of (i) extracting or
809 diverting non-Project water from any source, or (ii) diverting such non-Project water into Project
810 facilities.

811 (4) Diversion of such non-Project water into Project facilities shall be
812 consistent with all applicable laws, and if involving groundwater, consistent with any applicable
813 groundwater management plan for the area from which it was extracted.

814 (5) After Project purposes are met, as determined by the Contracting
815 Officer, the United States and the Contractor shall share priority to utilize the remaining capacity of
816 the facilities declared to be available by the Contracting Officer for conveyance and transportation of
817 non-Project water prior to any such remaining capacity being made available to non-Project
818 contractors.

819 OPINIONS AND DETERMINATIONS

820 18. (a) Where the terms of this Contract provide for actions to be based upon the

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821 opinion or determination of either party to this Contract, said terms shall not be construed as
822 permitting such action to be predicated upon arbitrary, capricious, or unreasonable opinions or
823 determinations. Both parties, notwithstanding any other provisions of this Contract, expressly
824 reserve the right to seek relief from and appropriate adjustment for any such arbitrary, capricious, or
825 unreasonable opinion or determination. Each opinion or determination by either party shall be
826 provided in a timely manner. Nothing in subdivision (a) of Article 18 of this Contract is intended to
827 or shall affect or alter the standard of judicial review applicable under Federal law to any opinion or
828 determination implementing a specific provision of Federal law embodied in statute or regulation.

829 (b) The Contracting Officer shall have the right to make determinations necessary
830 to administer this Contract that are consistent with the provisions of this Contract, the laws of the
831 United States and of the State of California, and the rules and regulations promulgated by the
832 Secretary of the Interior. Such determinations shall be made in consultation with the Contractor to
833 the extent reasonably practicable.

834 COORDINATION AND COOPERATION

835 19. (a) In order to further their mutual goals and objectives, the Contracting Officer
836 and the Contractor shall communicate, coordinate, and cooperate with each other, and with other
837 affected Project Contractors, in order to improve the operation and management of the Project. The
838 communication, coordination, and cooperation regarding operations and management shall include,

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839 but not be limited to, any action which will or may materially affect the quantity or quality of Project
840 Water supply, the allocation of Project Water supply, and Project financial matters including, but not
841 limited to, budget issues. The communication, coordination, and cooperation provided for hereunder
842 shall extend to all provisions of this Contract. Each party shall retain exclusive decision making
843 authority for all actions, opinions, and determinations to be made by the respective party.

844 (b) Within 120 days following the effective date of this Contract, the Contractor,
845 other affected Project Contractors, and the Contracting Officer shall arrange to meet with interested
846 Project Contractors to develop a mutually agreeable, written Project-wide process, which may be
847 amended as necessary separate and apart from this Contract. The goal of this process shall be to
848 provide, to the extent practicable, the means of mutual communication and interaction regarding
849 significant decisions concerning Project operation and management on a real-time basis.

850 (c) In light of the factors referred to in subdivision (b) of Article 3 of this
851 Contract, it is the intent of the Secretary to improve water supply reliability. To carry out this intent:

852 (1) The Contracting Officer will, at the request of the Contractor, assist in
853 the development of integrated resource management plans for the Contractor. Further, the
854 Contracting Officer will, as appropriate, seek authorizations for implementation of partnerships to
855 improve water supply, water quality, and reliability.

856 (2) The Secretary will, as appropriate, pursue program and project

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857 implementation and authorization in coordination with Project Contractors to improve the water
858 supply, water quality, and reliability of the Project for all Project purposes.

859 (3) The Secretary will coordinate with Project Contractors and the State of
860 California to seek improved water resource management.

861 (4) The Secretary will coordinate actions of agencies within the
862 Department of the Interior that may impact the availability of water for Project purposes.

863 (5) The Contracting Officer shall periodically, but not less than annually,
864 hold division level meetings to discuss Project operations, division level water management
865 activities, and other issues as appropriate.

866 (d) Without limiting the contractual obligations of the Contracting Officer under
867 the other Articles of this Contract, nothing in this Article shall be construed to limit or constrain the
868 Contracting Officer's ability to communicate, coordinate, and cooperate with the Contractor or other
869 interested stakeholders or to make decisions in a timely fashion as needed to protect health, safety or
870 the physical integrity of structures or facilities.

871 CHARGES FOR DELINQUENT PAYMENTS

872 20. (a) The Contractor shall be subject to interest, administrative and penalty charges
873 on delinquent installments or payments. When a payment is not received by the due date, the
874 Contractor shall pay an interest charge for each day the payment is delinquent beyond the due date.
875 When a payment becomes 60 days delinquent, the Contractor shall pay an administrative charge to
876 cover additional costs of billing and processing the delinquent payment. When a payment is
877 delinquent 90 days or more, the Contractor shall pay an additional penalty charge of six percent per

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878 year for each day the payment is delinquent beyond the due date. Further, the Contractor shall pay
879 any fees incurred for debt collection services associated with a delinquent payment.

880 (b) The interest charge rate shall be the greater of the rate prescribed quarterly in
881 the Federal Register by the Department of the Treasury for application to overdue payments, or the
882 interest rate of one-half of one percent per month prescribed by Section 6 of the Reclamation Project
883 Act of 1939 (Public Law 76-260). The interest charge rate shall be determined as of the due date and
884 remain fixed for the duration of the delinquent period.

885 (c) When a partial payment on a delinquent account is received, the amount
886 received shall be applied, first to the penalty, second to the administrative charges, third to the
887 accrued interest, and finally to the overdue payment.

888 EQUAL OPPORTUNITY

889 21. During the performance of this Contract, the Contractor agrees as follows:

890 (a) The Contractor will not discriminate against any employee or applicant for
891 employment because of race, color, religion, sex, or national origin. The Contractor will take
892 affirmative action to ensure that applicants are employed, and that employees are treated during
893 employment, without regard to their race, color, religion, sex, or national origin. Such action shall
894 include, but not be limited to, the following: Employment, upgrading, demotion, or transfer;
895 recruitment or recruitment advertising; layoff or termination, rates of payment or other forms of
896 compensation; and selection for training, including apprenticeship. The Contractor agrees to post in
897 conspicuous places, available to employees and applicants for employment, notices to be provided by
898 the Contracting Officer setting forth the provisions of this nondiscrimination clause.

899 (b) The Contractor will, in all solicitations or advertisements for employees placed
900 by or on behalf of the Contractor, state that all qualified applicants will receive consideration for
901 employment without discrimination because of race, color, religion, sex, or national origin.

902 (c) The Contractor will send to each labor union or representative of workers with
903 which it has a collective bargaining agreement or other contract or understanding, a notice, to be
904 provided by the Contracting Officer, advising the said labor union or workers' representative of the
905 Contractor's commitments under Section 202 of Executive Order 11246 of September 24, 1965, and
906 shall post copies of the notice in conspicuous places available to employees and applicants for

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907 employment.

908 (d) The Contractor will comply with all provisions of Executive Order
909 No. 11246 of September 24, 1965, as amended, and of the rules, regulations, and relevant orders of
910 the Secretary of Labor.

911 (e) The Contractor will furnish all information and reports required by said
912 amended Executive Order and by the rules, regulations, and orders of the Secretary of Labor, or
913 pursuant thereto, and will permit access to its books, records, and accounts by the Contracting Officer
914 and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules,
915 regulations, and orders.

916 (f) In the event of the Contractor's noncompliance with the nondiscrimination
917 clauses of this Contract or with any of the said rules, regulations, or orders, this Contract may be
918 canceled, terminated, or suspended, in whole or in part, and the Contractor may be declared ineligible
919 for further Government contracts in accordance with procedures authorized in said amended
920 Executive Order, and such other sanctions may be imposed and remedies invoked as provided in said
921 Executive Order, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided
922 by law.

923 (g) The Contractor will include the provisions of paragraphs (a) through (g) in
924 every subcontract or purchase order unless exempted by the rules, regulations, or orders of the
925 Secretary of Labor issued pursuant to Section 204 of said amended Executive Order, so that such
926 provisions will be binding upon each subcontractor or vendor. The Contractor will take such action
927 with respect to any subcontract or purchase order as may be directed by the Secretary of Labor as a
928 means of enforcing such provisions, including sanctions for noncompliance: Provided, however, That
929 in the event the Contractor becomes involved in, or is threatened with, litigation with a subcontractor
930 or vendor as a result of such direction, the Contractor may request the United States to enter into such
931 litigation to protect the interests of the United States.

932 GENERAL OBLIGATION--BENEFITS CONDITIONED UPON PAYMENT

933 22. (a) The obligation of the Contractor to pay the United States as provided in this
934 Contract is a general obligation of the Contractor notwithstanding the manner in which the obligation
935 may be distributed among the Contractor's water users and notwithstanding the default of individual
936 water users in their obligations to the Contractor.

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937 (b) The payment of charges becoming due hereunder is a condition precedent to
938 receiving benefits under this Contract. The United States shall not make water available to the
939 Contractor through Project facilities during any period in which the Contractor may be in arrears in
940 the advance payment of water rates due the United States. The Contractor shall not furnish water
941 made available pursuant to this Contract for lands or parties which are in arrears in the advance
942 payment of water rates levied or established by the Contractor.

943 (c) With respect to subdivision (b) of this Article, the Contractor shall have no
944 obligation to require advance payment for water rates which it levies.

945 COMPLIANCE WITH CIVIL RIGHTS LAWS AND REGULATIONS

946 23. (a) The Contractor shall comply with Title VI of the Civil Rights Act of 1964 (42
947 U.S.C. 2000d), Section 504 of the Rehabilitation Act of 1975 (P.L. 93-112, as amended), the Age
948 Discrimination Act of 1975 (42 U.S.C. 6101, et seq.) and any other applicable civil rights laws, as
949 well as with their respective implementing regulations and guidelines imposed by the U.S.
950 Department of the Interior and/or Bureau of Reclamation.

951 (b) These statutes require that no person in the United States shall, on the grounds
952 of race, color, national origin, handicap, or age, be excluded from participation in, be denied the
953 benefits of, or be otherwise subjected to discrimination under any program or activity receiving
954 financial assistance from the Bureau of Reclamation. By executing this Contract, the Contractor
955 agrees to immediately take any measures necessary to implement this obligation, including
956 permitting officials of the United States to inspect premises, programs, and documents.

957 (c) The Contractor makes this agreement in consideration of and for the purpose
958 of obtaining any and all Federal grants, loans, contracts, property discounts, or other Federal financial
959 assistance extended after the date hereof to the Contractor by the Bureau of Reclamation, including
960 installment payments after such date on account of arrangements for Federal financial assistance
961 which were approved before such date. The Contractor recognizes and agrees that such Federal
962 assistance will be extended in reliance on the representations and agreements made in this Article,
963 and that the United States reserves the right to seek judicial enforcement thereof.

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PRIVACY ACT COMPLIANCE

965 24. (a) The Contractor shall comply with the Privacy Act of 1974 (5 U.S.C. 552a) (the
966 Act) and the Department of the Interior rules and regulations under the Act (43 CFR 2.45 et seq.) in
967 maintaining Landholder acreage certification and reporting records, required to be submitted to the
968 Contractor for compliance with Sections 206 and 228 of the Reclamation Reform Act of 1982 (96
969 Stat. 1266), and pursuant to 43 CFR 426.18.

970 (b) With respect to the application and administration of the criminal penalty
971 provisions of the Act (5 U.S.C. 552a(i)), the Contractor and the Contractor's employees responsible
972 for maintaining the certification and reporting records referenced in (a) above are considered to be
973 employees of the Department of the Interior. See 5 U.S.C. 552a(m).

974 (c) The Contracting Officer or a designated representative shall provide the
975 Contractor with current copies of the Interior Department Privacy Act regulations and the Bureau of
976 Reclamation Federal Register Privacy Act System of Records Notice (Acreage Limitation--Interior,
977 Reclamation-31) which govern the maintenance, safeguarding, and disclosure of information
978 contained in the Landholder's certification and reporting records.

979 (d) The Contracting Officer shall designate a full-time employee of the Bureau of
980 Reclamation to be the System Manager who shall be responsible for making decisions on denials
981 pursuant to 43 CFR 2.61 and 2.64 amendment requests pursuant to 43 CFR 2.72. The Contractor is
982 authorized to grant requests by individuals for access to their own records.

983 (e) The Contractor shall forward promptly to the System Manager each proposed
984 denial of access under 43 CFR 2.64; and each request for amendment of records filed under 43 CFR
985 2.71; notify the requester accordingly of such referral; and provide the System Manager with
986 information and records necessary to prepare an appropriate response to the requester. These
987 requirements do not apply to individuals seeking access to their own certification and reporting forms
988 filed with the Contractor pursuant to 43 CFR 426.18, unless the requester elects to cite the Privacy
989 Act as a basis for the request.

990 CONTRACTOR TO PAY CERTAIN MISCELLANEOUS COSTS

991 25. In addition to all other payments to be made by the Contractor pursuant to this

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992 Contract, the Contractor shall pay to the United States, within 60 days after receipt of a bill and
993 detailed statement submitted by the Contracting Officer to the Contractor for such specific items of
994 direct cost incurred by the United States for work requested by the Contractor associated with this
995 Contract plus indirect costs in accordance with applicable Bureau of Reclamation policies and
996 procedures. All such amounts referred to in this Article shall not exceed the amount agreed to in
997 writing in advance by the Contractor. This Article shall not apply to costs for routine contract
998 administration.

999 WATER CONSERVATION

1000 26. (a) Prior to the delivery of water provided from or conveyed through Federally
1001 constructed or Federally financed facilities pursuant to this Contract, the Contractor shall be
1002 implementing an effective water conservation and efficiency program based on the Contractor's water
1003 conservation plan that has been determined by the Contracting Officer to meet the conservation and
1004 efficiency criteria for evaluating water conservation plans established under Federal law. The water
1005 conservation and efficiency program shall contain definite water conservation objectives, appropriate
1006 economically feasible water conservation measures, and time schedules for meeting those objectives.
1007 Continued Project Water delivery pursuant to this Contract shall be contingent upon the
1008 Contractor's continued implementation of such water conservation program. In the event the
1009 Contractor's water conservation plan or any revised water conservation plan completed pursuant to

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1010 subdivision (d) of Article 26 of this Contract have not yet been determined by the Contracting Officer
1011 to meet such criteria, due to circumstances which the Contracting Officer determines are beyond the
1012 control of the Contractor, water deliveries shall be made under this Contract so long as the Contractor
1013 diligently works with the Contracting Officer to obtain such determination at the earliest practicable
1014 date, and thereafter the Contractor immediately begins implementing its water conservation and
1015 efficiency program in accordance with the time schedules therein.

1016 (b) Should the amount of M&I Water delivered pursuant to subdivision (a) of
1017 Article 3 of this Contract equal or exceed 2,000 acre-feet per Year, the Contractor shall implement
1018 the Best Management Practices identified by the time frames issued by the California Urban Water
1019 Conservation Council for such M&I Water unless any such practice is determined by the Contracting
1020 Officer to be inappropriate for the Contractor.

1021 (c) The Contractor shall submit to the Contracting Officer a report on the status of
1022 its implementation of the water conservation plan on the reporting dates specified in the then existing
1023 conservation and efficiency criteria established under Federal law.

1024 (d) At five year intervals, the Contractor shall revise its water conservation plan to
1025 reflect the then current conservation and efficiency criteria for evaluating water conservation plans
1026 established under Federal law and submit such revised water management plan to the Contracting
1027 Officer for review and evaluation. The Contracting Officer will then determine if the water

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1028 conservation plan meets Reclamation's then current conservation and efficiency criteria for
1029 evaluating water conservation plans established under Federal law.

1030 (e) If the Contractor is engaged in direct groundwater recharge, such activity shall
1031 be described in the Contractor's water conservation plan.

1032 EXISTING OR ACQUIRED WATER OR WATER RIGHTS

1033 27. Except as specifically provided in Article 17 of this Contract, the provisions of this
1034 Contract shall not be applicable to or affect non-Project water or water rights now owned or hereafter
1035 acquired by the Contractor or any user of such water within the Contractor's Service Area. Any such
1036 water shall not be considered Project Water under this Contract. In addition, this Contract shall not
1037 be construed as limiting or curtailing any rights which the Contractor or any water user within the
1038 Contractor's Service Area acquires or has available under any other contract pursuant to Federal
1039 Reclamation law.

1040 OPERATION AND MAINTENANCE BY OPERATING NON-FEDERAL ENTITY¹⁷

1041 28. (a) The O&M of a portion of the Project facilities which serve the Contractor, and
1042 responsibility for funding a portion of the costs of such O&M, have been transferred to the Operating
1043 Non-Federal Entity by separate agreement between the United States and the Operating Non-Federal
1044 Entity. That separate agreement shall not interfere with or affect the rights or obligations of the

17 Contractor/Unit specific. Other ONFE's may need to be referenced for each individual contractor

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1045 Contractor or the United States hereunder.

1046 (b) The Contracting Officer has previously notified the Contractor in writing that
1047 the O&M of a portion of the Project facilities which serve the Contractor has been transferred to the
1048 Operating Non-Federal Entity, and therefore, the Contractor shall pay directly to the Operating Non-
1049 Federal Entity, or to any successor approved by the Contracting Officer under the terms and
1050 conditions of the separate agreement between the United States and the Operating Non-Federal Entity
1051 described in subdivision (a) of this Article, all rates, charges, or assessments of any kind, including
1052 any assessment for reserve funds, which the Operating Non-Federal Entity or such successor
1053 determines, sets, or establishes for the O&M of the portion of the Project facilities operated and
1054 maintained by the Operating Non-Federal Entity or such successor. Such direct payments to the
1055 Operating Non-Federal Entity or such successor shall not relieve the Contractor of its obligation to
1056 pay directly to the United States the Contractor's share of the Project Rates, Charges, and Tiered
1057 Pricing Components except to the extent the Operating Non-Federal Entity collects payments on
1058 behalf of the United States in accordance with the separate agreement identified in subdivision (a) of
1059 this Article.

1060 (c) For so long as the O&M of any portion of the Project facilities serving the
1061 Contractor is performed by the Operating Non-Federal Entity, or any successor thereto, the
1062 Contracting Officer shall adjust those components of the Rates for Water Delivered under this

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1063 Contract representing the cost associated with the activity being performed by the Operating Non-
1064 Federal Entity or its successor.

1065 (d) In the event the O&M of the Project facilities operated and maintained by the
1066 Operating Non-Federal Entity is re-assumed by the United States during the term of this Contract, the
1067 Contracting Officer shall so notify the Contractor, in writing, and present to the Contractor a revised
1068 Exhibit [B] which shall include the portion of the Rates to be paid by the Contractor for Project
1069 Water under this Contract representing the O&M costs of the portion of such Project facilities which
1070 have been re-assumed. The Contractor shall, thereafter, in the absence of written notification from
1071 the Contracting Officer to the contrary, pay the Rates, Charges, and Tiered Pricing Component(s)
1072 specified in the revised Exhibit [B] directly to the United States in compliance with Article 7 of this
1073 Contract.

1074 CONTINGENT ON APPROPRIATION OR ALLOTMENT OF FUNDS

1075 29. The expenditure or advance of any money or the performance of any obligation of the
1076 United States under this Contract shall be contingent upon appropriation or allotment of funds.
1077 Absence of appropriation or allotment of funds shall not relieve the Contractor from any obligations
1078 under this Contract. No liability shall accrue to the United States in case funds are not appropriated
1079 or allotted.

1080 BOOKS, RECORDS, AND REPORTS

1081 30. (a) The Contractor shall establish and maintain accounts and other books and
1082 records pertaining to administration of the terms and conditions of this Contract, including: the
1083 Contractor's financial transactions, water supply data, and Project land and right-of-way agreements;
1084 the water users' land-use (crop census), land ownership, land-leasing and water use data; and other

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1085 matters that the Contracting Officer may require. Reports thereon shall be furnished to the
1086 Contracting Officer in such form and on such date or dates as the Contracting Officer may require.
1087 Subject to applicable Federal laws and regulations, each party to this Contract shall have the right
1088 during office hours to examine and make copies of the other party's books and records relating to
1089 matters covered by this Contract.

1090 (b) Notwithstanding the provisions of subdivision (a) of this Article, no books,
1091 records, or other information shall be requested from the Contractor by the Contracting Officer unless
1092 such books, records, or information are reasonably related to the administration or performance of
1093 this Contract. Any such request shall allow the Contractor a reasonable period of time within which
1094 to provide the requested books, records, or information.

1095 (c) At such time as the Contractor provides information to the Contracting Officer
1096 pursuant to subdivision (a) of this Article, a copy of such information shall be provided to the
1097 Operating Non-Federal Entity.

1098 ASSIGNMENT LIMITED--SUCCESSORS AND ASSIGNS OBLIGATED

1099 31. (a) The provisions of this Contract shall apply to and bind the successors and
1100 assigns of the parties hereto, but no assignment or transfer of this Contract or any right or interest
1101 therein shall be valid until approved in writing by the Contracting Officer.

1102 (b) The assignment of any right or interest in this Contract by either party shall not
1103 interfere with the rights or obligations of the other party to this Contract absent the written
1104 concurrence of said other party.

1105 (c) The Contracting Officer shall not unreasonably condition or withhold approval

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1106 of any proposed assignment.

1107 SEVERABILITY

1108 32. In the event that a person or entity who is neither (i) a party to a Project contract, nor
1109 (ii) a person or entity that receives Project Water from a party to a Project contract, nor (iii) an
1110 association or other form of organization whose primary function is to represent parties to Project
1111 contracts, brings an action in a court of competent jurisdiction challenging the legality or
1112 enforceability of a provision included in this Contract and said person, entity, association, or
1113 organization obtains a final court decision holding that such provision is legally invalid or
1114 unenforceable and the Contractor has not intervened in that lawsuit in support of the plaintiff(s), the
1115 parties to this Contract shall use their best efforts to (i) within 30 days of the date of such final court
1116 decision identify by mutual agreement the provisions in this Contract which must be revised and (ii)
1117 within three months thereafter promptly agree on the appropriate revision(s). The time periods
1118 specified above may be extended by mutual agreement of the parties. Pending the completion of the
1119 actions designated above, to the extent it can do so without violating any applicable provisions of
1120 law, the United States shall continue to make the quantities of Project Water specified in this
1121 Contract available to the Contractor pursuant to the provisions of this Contract which were not found
1122 to be legally invalid or unenforceable in the final court decision.

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RESOLUTION OF DISPUTES

1124 33. Should any dispute arise concerning any provisions of this Contract, or the parties'□
1125 rights and obligations thereunder, the parties shall meet and confer in an attempt to resolve the
1126 dispute. Prior to the Contractor commencing any legal action, or the Contracting Officer referring
1127 any matter to the Department of Justice, the party shall provide to the other party 30 days'□ written
1128 notice of the intent to take such action; Provided, That such notice shall not be required where a
1129 delay in commencing an action would prejudice the interests of the party that intends to file suit.
1130 During the 30 day notice period, the Contractor and the Contracting Officer shall meet and confer in
1131 an attempt to resolve the dispute. Except as specifically provided, nothing herein is intended to
1132 waive or abridge any right or remedy that the Contractor or the United States may have.

OFFICIALS NOT TO BENEFIT

1133 34. No Member of or Delegate to Congress, Resident Commissioner, or official of the
1134 Contractor shall benefit from this Contract other than as a water user or landowner in the same
1135 manner as other water users or landowners.

1136

CHANGES IN CONTRACTOR'S SERVICE AREA

1137 35. (a) While this Contract is in effect, no change may be made in the Contractor's
1138 Service Area or boundaries, by inclusion or exclusion of lands, dissolution, consolidation, merger, or
1139 otherwise, except upon the Contracting Officer's written consent.

1140

(b) Within 30 days of receipt of a request for such a change, the Contracting

1141

Officer will notify the Contractor of any additional information required by the Contracting Officer

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1142 for processing said request, and both parties will meet to establish a mutually agreeable schedule for
1143 timely completion of the process. Such process will analyze whether the proposed change is likely
1144 to: (i) result in the use of Project Water contrary to the terms of this Contract; (ii) impair the ability of
1145 the Contractor to pay for Project Water furnished under this Contract or to pay for any Federally-
1146 constructed facilities for which the Contractor is responsible; and (iii) have an impact on any Project
1147 Water rights applications, permits, or licenses. In addition, the Contracting Officer shall comply with
1148 the NEPA and the ESA. The Contractor will be responsible for all costs incurred by the Contracting
1149 Officer in this process, and such costs will be paid in accordance with Article 25 of this Contract.

1150 FEDERAL LAWS

1151 36. By entering into this Contract, the Contractor does not waive its rights to contest the
1152 validity or application in connection with the performance of the terms and conditions of this
1153 Contract of any Federal law or regulation; Provided, That the Contractor agrees to comply with the
1154 terms and conditions of this Contract unless and until relief from application of such Federal law or
1155 regulation to the implementing provision of the Contract is granted by a court of competent
1156 jurisdiction.

1157 NOTICES

1158 37. Any notice, demand, or request authorized or required by this Contract shall be
1159 deemed to have been given, on behalf of the Contractor, when mailed, postage prepaid, or delivered
1160 to the Area Manager, South-Central California Area Office, 1243 N Street, Fresno, CA 93721, and on
1161 behalf of the United States, when mailed, postage prepaid, or delivered to the Board of Directors of

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1162 the **Broadview Water District, P.O. Box 95, Firebaugh CA 93622**. The designation of the
1163 addressee or the address may be changed by notice given in the same manner as provided in this
1164 Article for other notices.

1165 | CONFIRMATION OF CONTRACT¹⁸

1166 38. The Contractor, after the execution of this Contract, shall promptly seek to secure a
1167 decree of a court of competent jurisdiction of the State of California, confirming the execution of this
1168 Contract. The Contractor shall furnish the United States a certified copy of the final decree, the
1169 validation proceedings, and all pertinent supporting records of the court approving and confirming
1170 this Contract, and decreeing and adjudging it to be lawful, valid, and binding on the Contractor.

¹⁸ Contractor Specific

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1171 IN WITNESS WHEREOF, the parties hereto have executed this Contract as of the day and
1172 year first above written.

1173 THE UNITED STATES OF AMERICA

1174 By: _____
1175 Regional Director, Mid-Pacific Region
1176 Bureau of Reclamation

1177 **BROADVIEW WATER DISTRICT**

1178 By: _____
1179 President of the Board of Directors

1180 Attest:

1181 By: _____
1182 Secretary of the Board of Directors

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EXHIBIT A

[Map or Description of Service Area]

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EXHIBIT B

[Initial Rates and Charges]